

AMENDED IN SENATE JULY 24, 2009

CALIFORNIA LEGISLATURE—2009—10 FOURTH EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 19

Introduced by Assembly Member Evans

July 2, 2009

An act relating to the Budget Act of 2009. An act to amend Sections 12301.6, 12305.7, 12305.71, and 12305.82 of, and to add Sections 12301.15, 12301.22, 12301.24, 12301.25, 12305.73, 12305.85, and 12305.86 to, the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 19, as amended, Evans. ~~Budget Act of 2009.~~ *In-home supportive services.*

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons. Under existing law, IHSS recipients who are eligible for the Medi-Cal program, are provided with personal care option services, as defined, in lieu of receiving these services under the IHSS program.

Under existing law, the State Department of Social Services is required, in consultation and coordination with county welfare departments, to establish and implement statewide hourly task guidelines and instructions to provide counties with a standard tool for consistently and accurately assessing service needs and authorizing service hours to meet those needs.

This bill would require the department, on or before December 31, 2011, in consultation with county welfare departments and stakeholders, to develop and implement procedures to ensure that an IHSS provider of services receives a list specifying the approved duties to be performed for each recipient under the provider's care and a complete list of supportive service tasks available under the IHSS program. It would require an application for IHSS benefits to contain a notice that providers will be provided with this information. This bill would also require all prospective IHSS providers to complete a prescribed provider orientation as a condition of IHSS program participation.

This bill would require the standardized provider timesheet used to track the work performed by providers of services under the IHSS program to contain a certification to be signed by the provider and recipient verifying that the information provided in the timesheet is true and correct and a statement relating to the imposition of civil penalties, as provided for in the bill, if the information is found not to be true and correct. The bill would require the timesheet to include designated spaces for the index fingerprint of the provider and recipient, effective July 1, 2011.

Existing law, upon request of a recipient of in-home supportive services, or a recipient of personal care services under the Medi-Cal program, authorizes a public authority or nonprofit consortium to provide a criminal background check on certain provider applicants, pursuant to specified provisions.

Existing law contains provisions prohibiting a public authority or nonprofit consortium from charging a provider, potential personnel, or service recipient a fee to cover designated costs associated with a criminal background check.

This bill would, instead, require that criminal background checks be performed for prospective providers commencing on the effective date of the bill, as a condition of IHSS enrollment and that they be performed at the provider's expense. The bill would require a criminal background check to be performed no later than July 1, 2010, for a person already

on a county's provider registry or already providing services, but not on the registry, on the effective date of the bill.

Under existing law, if a provider applicant is rejected as a result of information contained in the criminal background report, the applicant is required to be advised of his or her right to request a copy of his or her own criminal history record and to submit a challenge to the Department of Justice to contest the criminal background report.

This bill would, instead, if the applicant or provider is rejected as a result of information contained in the criminal background report, require that he or she receive a copy of that report from the Department of Justice, and that he or she be advised of his or her right to contest the criminal background report. It would, in addition, require the State Department of Social Services to develop a written appeal process for a current and prospective provider who is determined ineligible to receive IHSS payments.

The bill would also enact substantially similar criminal background check requirements applicable to a county for applicants or providers not on a provider registry of a nonprofit consortium or public authority. By increasing county duties with respect to the program, this bill would impose a state-mandated local program.

The bill would also require the department to develop protocols and procedures for obtaining fingerprints from individuals eligible for IHSS, as specified.

Existing law requires the department and the State Department of Health Care Services to develop a provider enrollment form that each person seeking to provide supportive services shall complete, sign under penalty of perjury, and submit to the county.

This bill would require a provider enrollment form to be completed using the provider's physical residential address, and would prohibit use of a post office box address. This bill would prohibit a provider's paycheck from being mailed to a post office box unless the county has approved a written or oral request from the provider, as specified.

Existing law requires the State Department of Social Services, in consultation with counties, to develop a standardized curriculum, training materials, and work aids, and operate an ongoing, statewide training program on the supportive services uniformity system, as specified.

This bill would require the department, on or before July 1, 2010, in consultation with the State Department of Health Care Services and other designated parties, to ensure that a standardized curriculum and

training materials for county social workers are developed for the purpose of preventing fraud within the IHSS program.

This bill would require the State Department of Social Services to develop protocols for the implementation of targeted program integrity mailings, as described in the bill, and to distribute the targeted program integrity mailings to providers.

By imposing additional duties on counties with respect to quality assurance activities, including targeted program integrity mailings and monitoring delivery of services, the bill would create a state-mandated local program.

This bill would require the State Department of Social Services to consult, as appropriate, with stakeholders on the implementation of the timesheet and criminal background check provisions of the bill.

Existing law contains provisions relating to the duties of the State Department of Health Care Services, the State Department of Social Services, and the counties relating to IHSS fraud.

This bill would require the State Department of Social Services, in consultation with specified parties, to develop uniform statewide protocols for acceptable activities to be performed and acceptable measures to be taken by the department, the State Department of Health Care Services, and the counties, for purposes of IHSS fraud prevention. It would also provide that the refusal of an IHSS provider or recipient to comply with program requirements may result in termination of program participation.

The bill would provide for the implementation of its provisions through all-county letters or similar instructions, and would also provide for the adoption of emergency regulations by July 1, 2010.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.~~

~~The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.~~

~~This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12301.15 is added to the Welfare and
2 Institutions Code, to read:

3 12301.15. Effective January 1, 2010, the application for
4 in-home supportive services shall contain a notice to the recipient
5 that his or her provider or providers will be given written notice
6 of the recipient's authorized services and full number of services
7 hours allotted to the recipient. The application shall inform
8 recipients of the Medi-Cal toll-free telephone fraud hotline and
9 Internet Web site for reporting suspected fraud or abuse in the
10 provision or receipt of supportive services.

11 SEC. 2. Section 12301.22 is added to the Welfare and
12 Institutions Code, to read:

13 12301.22. On or before December 31, 2011, the department,
14 in consultation with county welfare departments and other
15 stakeholders, shall develop a process to ensure that a provider of
16 services under this article receives a list specifying the approved
17 duties to be performed for each recipient under the provider's care
18 and a complete list of supportive service tasks available under the
19 IHSS program.

1 SEC. 3. Section 12301.24 is added to the Welfare and
2 Institutions Code, to read:

3 12301.24. (a) Effective November 1, 2009, all prospective
4 providers must complete a provider orientation at the time of
5 enrollment, as developed by the department, in consultation with
6 counties, which shall include, but is not limited to, all of the
7 following:

8 (1) The requirements to be an eligible IHSS provider.

9 (2) A description of the IHSS program.

10 (3) The rules, regulations, and provider-related processes and
11 procedures, including timesheets.

12 (4) The consequences of committing fraud in the IHSS program.

13 (5) The Medi-Cal toll-free telephone fraud hotline and Internet
14 Web site for reporting suspected fraud or abuse in the provision
15 or receipt of supportive services.

16 (b) In order to complete provider enrollment, at the conclusion
17 of the provider orientation, all applicants shall sign a statement
18 specifying that the provider agrees to all of the following:

19 (1) He or she will provide to a recipient the authorized services.

20 (2) He or she has received a demonstration of, and understands,
21 timesheet requirements, including content, signature, and
22 fingerprinting, when implemented.

23 (3) He or she shall cooperate with state or county staff to
24 provide any information necessary for assessment or evaluation
25 of a case.

26 (4) He or she understands and agrees to program expectations
27 and is aware of the measures that the state or county may take to
28 enforce program integrity.

29 (5) He or she has attended the provider orientation and
30 understands that failure to comply with program rules and
31 requirements may result in the provider being terminated from
32 providing services through the IHSS program.

33 (c) Between November 1, 2009, and June 30, 2010, all current
34 providers shall receive the information described in this section.
35 Following receipt of this information, a provider shall submit a
36 signed agreement, consistent with the requirements of this section,
37 to the appropriate county office.

38 (d) The county shall indefinitely retain this statement in the
39 provider's file. Refusal of the provider to sign the statement
40 described in subdivision (b) shall result in the provider being

ineligible to receive payment for the provision of services and participate as a provider in the IHSS program.

SEC. 4. Section 12301.25 is added to the Welfare and Institutions Code, to read:

12301.25. (a) Notwithstanding any other provision of law, the standardized provider timesheet used to track the work performed by providers of services under this article shall contain both of the following:

(1) A certification to be signed by the provider and recipient, verifying that the information provided in the timesheet is true and correct.

(2) A statement that the provider or recipient may be subject to civil penalties if the information provided is found not to be true and correct.

(b) A person who is convicted of fraud, as defined in subdivision (a) of Section 12305.8, resulting from intentional deception or misrepresentation in the provision of timesheet information under this section shall, in addition to any criminal penalties imposed, be subject to a civil penalty of at least five hundred dollars (\$500), but not to exceed one thousand dollars (\$1,000), for each violation.

(c) Effective July 1, 2011, the standardized provider timesheet shall also contain designated spaces for the index fingerprint of the provider and the recipient. The provider and the recipient shall place their respective index fingerprint in the designated location on the timesheet in order for the timesheet to be eligible for payment. An individual who is a minor or who is physically unable to provide an index fingerprint due to amputation or other physical limitations shall be exempt from the requirement to provide an index fingerprint under this section, and documentation of this exemption shall be maintained in the recipient or provider file, as applicable.

SEC. 5. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable

1 written notice to, and a reasonable response time by, members of
2 the general public and interested persons and organizations.

3 (4) If the enabling ordinance does not designate the board of
4 supervisors as the governing body of the public authority, the
5 enabling ordinance shall require the membership of the governing
6 body to meet the requirements of subparagraph (B) of paragraph
7 (3).

8 (c) (1) Any public authority created pursuant to this section
9 shall be deemed to be the employer of in-home supportive services
10 personnel referred to recipients under paragraph (3) of subdivision
11 (e) within the meaning of Chapter 10 (commencing with Section
12 3500) of Division 4 of Title 1 of the Government Code. Recipients
13 shall retain the right to hire, fire, and supervise the work of any
14 in-home supportive services personnel providing services to them.

15 (2) (A) Any nonprofit consortium contracting with a county
16 pursuant to this section shall be deemed to be the employer of
17 in-home supportive services personnel referred to recipients
18 pursuant to paragraph (3) of subdivision (e) for the purposes of
19 collective bargaining over wages, hours, and other terms and
20 conditions of employment.

21 (B) Recipients shall retain the right to hire, fire, and supervise
22 the work of any in-home supportive services personnel providing
23 services for them.

24 (d) A public authority established pursuant to this section or a
25 nonprofit consortium contracting with a county pursuant to this
26 section, when providing for the delivery of services under this
27 article by contract in accordance with Sections 12302 and 12302.1
28 or by direct payment to a provider chosen by a recipient in
29 accordance with Sections 12302 and 12302.2, shall comply with
30 and be subject to, all statutory and regulatory provisions applicable
31 to the respective delivery mode.

32 (e) Any nonprofit consortium contracting with a county pursuant
33 to this section or any public authority established pursuant to this
34 section shall provide for all of the following functions under this
35 article, but shall not be limited to those functions:

36 (1) The provision of assistance to recipients in finding in-home
37 supportive services personnel through the establishment of a
38 registry.

39 (2) (A) (i) The investigation of the qualifications and
40 background of potential personnel. ~~The~~ *Upon the effective date of*

1 *the amendments to this section made during the 2009–10 Fourth*
2 *Extraordinary Session of the Legislature, the investigation may,*
3 *with respect to any provider in the registry or prospective registry*
4 *applicant who is not employed before January 1, 2008, shall*
5 *include criminal background checks requested by the nonprofit*
6 *consortium or public authority and conducted by the Department*
7 *of Justice pursuant to Section 15660, for those public authorities*
8 *or nonprofit consortia using the agencies on January 1, 2008 the*
9 *effective date of the amendments to this section made during the*
10 *2009–10 Fourth Extraordinary Session of the Legislature. Criminal*
11 *background checks shall be performed no later than July 1, 2010,*
12 *for any provider who is already on the registry on the effective*
13 *date of amendments to this section made during the 2009–10*
14 *Fourth Extraordinary Session of the Legislature, for whom a*
15 *criminal background check pursuant to this section has not*
16 *previously been provided, as a condition of the provider's*
17 *continued enrollment in the IHSS program. Criminal background*
18 *checks shall be conducted at the provider's expense.*

19 (ii) Upon notice from the Department of Justice notifying the
20 public authority or nonprofit consortium that the prospective
21 registry applicant has been convicted of a criminal offense specified
22 in Section 12305.81, the public authority or nonprofit consortium
23 shall deny the request to be placed on the registry for providing
24 supportive services to any recipient of the In-Home Supportive
25 Services program.

26 (B) (i) If an applicant *or provider* is rejected as a result of
27 information contained in the criminal background report, the
28 applicant *or provider* shall be advised in writing of his or her right
29 ~~to request~~ *receive* a copy of his or her own criminal history record
30 from the Department of Justice, as provided in Article 5
31 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
32 4 of the Penal Code, to review the information for accuracy and
33 completeness. The applicant *or provider* shall be advised that if,
34 upon review of his or her own criminal history record he or she
35 finds the information to be inaccurate or incomplete, the applicant
36 *or provider* shall have the right to submit a formal challenge to
37 the Department of Justice to contest the criminal background report.

38 (ii) *The department shall develop a written appeal process for*
39 *the current and prospective providers who are determined*

1 *ineligible to receive payment for the provision of services in the*
2 *In-Home Supportive Services program.*

3 (C) An applicant shall be informed of his or her right to a waiver
4 of the fee for obtaining a copy of a criminal history record, and of
5 how to submit a claim and proof of indigency, as required by
6 Section 11123 of the Penal Code.

7 ~~(D) No fee shall be charged to a provider, potential personnel,~~
8 ~~or service recipient to cover any costs of administering this~~
9 ~~paragraph associated with criminal background checks, or the cost~~
10 ~~to the Department of Justice or any law enforcement agency for~~
11 ~~processing the criminal background check. Nothing in this~~
12 ~~paragraph shall be construed to prohibit the Department of Justice~~
13 ~~from assessing a fee pursuant to Section 11105 or 11123 of the~~
14 ~~Penal Code to cover the cost of furnishing summary criminal~~
15 ~~history information. A public authority or nonprofit consortium~~
16 ~~shall not seek reimbursement unless the conditions described in~~
17 ~~subparagraph (F) are met.~~

18 (E) As used in this section, “nonprofit consortium” means a
19 nonprofit public benefit corporation that has all powers necessary
20 to carry out the delivery of in-home supportive services under the
21 delegated authority of a government entity.

22 ~~(F) (i) Upon verification that at least 50 percent of the public~~
23 ~~authority or nonprofit consortium list of registry applicants have~~
24 ~~received a criminal background check, the county may request~~
25 ~~reimbursement for the nonfederal share of cost associated with the~~
26 ~~criminal fingerprint record check in accordance to the fiscal~~
27 ~~claiming methodology.~~

28 ~~(ii) The public authority or nonprofit consortium shall provide~~
29 ~~a report to the State Department of Social Services on the number~~
30 ~~of prospective registry applicants that have been referred to the~~
31 ~~Department of Justice for a criminal background check.~~

32 ~~(iii) The Department of Justice shall provide verification to the~~
33 ~~State Department of Social Services on the number of prospective~~
34 ~~registry applicants that have completed a criminal background~~
35 ~~check.~~

36 (3) Establishment of a referral system under which in-home
37 supportive services personnel shall be referred to recipients.

38 (4) Providing for training for providers and recipients.

39 (5) (A) Performing any other functions related to the delivery
40 of in-home supportive services.

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95, a public authority or nonprofit consortium may provide a criminal background check on a nonregistry applicant or provider from the Department of Justice, in accordance with clause (i) of subparagraph (A) of paragraph (2) of subdivision (e). If the person who is the subject of the criminal background check is not hired or is terminated because of the information contained in the criminal background report, the provisions of subparagraph (B) of paragraph (2) of subdivision (e) shall apply.

(ii) A recipient of in-home supportive services pursuant to this chapter or a recipient of personal care services under the Medi-Cal program may elect to employ an individual as their service provider notwithstanding the individual's record of previous criminal convictions, unless those convictions include any of the offenses specified in Section 12305.81.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

1 (g) Any nonprofit consortium contracting with a county pursuant
2 to this section shall ensure that it has a governing body that
3 complies with the requirements of subparagraph (B) of paragraph
4 (3) of subdivision (b) or an advisory committee that complies with
5 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

6 (h) Recipients of services under this section may elect to receive
7 services from in-home supportive services personnel who are not
8 referred to them by the public authority or nonprofit consortium.
9 Those personnel shall be referred to the public authority or
10 nonprofit consortium for the purposes of wages, benefits, and other
11 terms and conditions of employment.

12 (i) (1) Nothing in this section shall be construed to affect the
13 state's responsibility with respect to the state payroll system,
14 unemployment insurance, or workers' compensation and other
15 provisions of Section 12302.2 for providers of in-home supportive
16 services.

17 (2) The Controller shall make any deductions from the wages
18 of in-home supportive services personnel, who are employees of
19 a public authority pursuant to paragraph (1) of subdivision (c), that
20 are agreed to by that public authority in collective bargaining with
21 the designated representative of the in-home supportive services
22 personnel pursuant to Chapter 10 (commencing with Section 3500)
23 of Division 4 of Title 1 of the Government Code and transfer the
24 deducted funds as directed in that agreement.

25 (3) Any county that elects to provide in-home supportive
26 services pursuant to this section shall be responsible for any
27 increased costs to the in-home supportive services case
28 management, information, and payrolling system attributable to
29 that election. The department shall collaborate with any county
30 that elects to provide in-home supportive services pursuant to this
31 section prior to implementing the amount of financial obligation
32 for which the county shall be responsible.

33 (j) To the extent permitted by federal law, personal care option
34 funds, obtained pursuant to Subchapter 19 (commencing with
35 Section 1396) of Chapter 7 of Title 42 of the United States Code,
36 along with matching funds using the state and county sharing ratio
37 established in subdivision (c) of Section 12306, or any other funds
38 that are obtained pursuant to Subchapter 19 (commencing with
39 Section 1396) of Chapter 7 of Title 42 of the United States Code,

1 may be used to establish and operate an entity authorized by this
2 section.

3 (k) Notwithstanding any other provision of law, the county, in
4 exercising its option to establish a public authority, shall not be
5 subject to competitive bidding requirements. However, contracts
6 entered into by either the county, a public authority, or a nonprofit
7 consortium pursuant to this section shall be subject to competitive
8 bidding as otherwise required by law.

9 (l) (1) The department may adopt regulations implementing
10 this section as emergency regulations in accordance with Chapter
11 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
12 Title 2 of the Government Code. For the purposes of the
13 Administrative Procedure Act, the adoption of the regulations shall
14 be deemed an emergency and necessary for the immediate
15 preservation of the public peace, health and safety, or general
16 welfare. Notwithstanding Chapter 3.5 (commencing with Section
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
18 these emergency regulations shall not be subject to the review and
19 approval of the Office of Administrative Law.

20 (2) Notwithstanding subdivision (h) of Section 11346.1 and
21 Section 11349.6 of the Government Code, the department shall
22 transmit these regulations directly to the Secretary of State for
23 filing. The regulations shall become effective immediately upon
24 filing by the Secretary of State.

25 (3) Except as otherwise provided for by Section 10554, the
26 Office of Administrative Law shall provide for the printing and
27 publication of these regulations in the California Code of
28 Regulations. Emergency regulations adopted pursuant to this
29 subdivision shall remain in effect for no more than 180 days.

30 (m) (1) In the event that a county elects to form a nonprofit
31 consortium or public authority pursuant to subdivision (a) before
32 the State Department of Health Care Services has obtained all
33 necessary federal approvals pursuant to paragraph (3) of
34 subdivision (j) of Section 14132.95, all of the following shall apply:

35 (A) Subdivision (d) shall apply only to those matters that do
36 not require federal approval.

37 (B) The second sentence of subdivision (h) shall not be
38 operative.

1 (C) The nonprofit consortium or public authority shall not
2 provide services other than those specified in paragraphs (1), (2),
3 (3), (4), and (5) of subdivision (e).

4 (2) Paragraph (1) shall become inoperative when the State
5 Department of Health Care Services has obtained all necessary
6 federal approvals pursuant to paragraph (3) of subdivision (j) of
7 Section 14132.95.

8 (n) (1) One year after the effective date of the first approval by
9 the department granted to the first public authority, the Bureau of
10 State Audits shall commission a study to review the performance
11 of that public authority.

12 (2) The study shall be submitted to the Legislature and the
13 Governor not later than two years after the effective date of the
14 approval specified in subdivision (a). The study shall give special
15 attention to the health and welfare of the recipients under the public
16 authority, including the degree to which all required services have
17 been delivered, out-of-home placement rates, prompt response to
18 recipient complaints, and any other issue the director deems
19 relevant.

20 (3) The report shall make recommendations to the Legislature
21 and the Governor for any changes to this section that will further
22 ensure the well-being of recipients and the most efficient delivery
23 of required services.

24 (o) Commencing July 1, 1997, the department shall provide
25 annual reports to the appropriate fiscal and policy committees of
26 the Legislature on the efficacy of the implementation of this
27 section, and shall include an assessment of the quality of care
28 provided pursuant to this section.

29 (p) (1) Notwithstanding any other provision of law, and except
30 as provided in paragraph (2), the department shall, no later than
31 January 1, 2009, implement subparagraphs (A) and (B) through
32 an all county letter from the director:

33 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
34 (e).

35 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

36 (2) The department shall, no later than July 1, 2009, adopt
37 regulations to implement subparagraphs (A) and (B) of paragraph
38 (1).

39 (q) The amendments made to paragraphs (2) and (5) of
40 subdivision (e) made by the act that added this subdivision during

1 the 2007–08 Regular Session of the Legislature shall only be
2 implemented to the extent that an appropriation is made in the
3 annual Budget Act or other statute, except for the amendments
4 that added subparagraph (D) of paragraph (2) of subdivision (e),
5 which shall go into effect January 1, 2009.

6 *SEC. 6. Section 12305.7 of the Welfare and Institutions Code*
7 *is amended to read:*

8 12305.7. The department shall perform all of the following
9 activities:

10 (a) Beginning in the 2004–05 fiscal year, and in each subsequent
11 fiscal year, the department in consultation with the State
12 Department of Health *Care* Services and the county welfare
13 departments shall design and conduct an error rate study to estimate
14 the extent of payment and service authorization errors and fraud
15 in the provision of supportive services. The error rate study findings
16 shall be used to prioritize and direct state and county fraud
17 detection and quality improvement efforts. The State Department
18 of Health *Care* Services shall provide technical assistance and
19 guidance for the error rate studies as requested by the department.

20 (b) (1) The department and the State Department of Health
21 *Care* Services shall conduct automated data matches to compare
22 Medi-Cal paid claims and third-party liability data with supportive
23 services paid service hours data to identify potential overpayments,
24 duplicate payments, alternative payment sources for supportive
25 services, and other potential supportive services delivery
26 discrepancies, including but not limited to, receipt of supportive
27 services by a recipient on the same day that other potentially
28 duplicative Medi-Cal services are received. Relevant data match
29 findings shall be transmitted to the counties, or to the appropriate
30 state entity, for action.

31 (2) The department, in consultation with the county welfare
32 departments and the State Department of Health *Care* Services,
33 shall determine, define, and issue instructions to the counties
34 describing the roles and responsibilities of the department, the
35 State Department of Health *Care* Services, and counties for
36 resolving data match discrepancies requiring followup, defining
37 the necessary actions that will be taken to resolve them, and the
38 process for exchange of information pertaining to the findings and
39 disposition of data match discrepancies.

1 (c) The department shall develop methods for verifying the
2 receipt of supportive services by program recipients. In developing
3 the specified methods the department shall obtain input from
4 program stakeholders as provided in Section 12305.72. The
5 department shall, in consultation with the county welfare
6 departments, also determine, define, and issue instructions
7 describing the roles and responsibilities of the department and the
8 county welfare departments for evaluating and responding to
9 identified problems and discrepancies.

10 (d) The department shall make available on its Internet Web
11 site the regulations, all-county letters, approved forms, and training
12 curricula developed and officially issued by the department to
13 implement the items described in Section 12305.72. The
14 department shall inform supportive services providers, recipients,
15 and the general public about the availability of these items and of
16 the Medi-Cal toll free fraud hotline and Web site for reporting
17 suspected fraud or abuse in the provision or receipt of supportive
18 services.

19 (e) (1) The department ~~shall~~, in consultation with counties and
20 in accordance with Section 12305.72, *shall* develop a standardized
21 curriculum, training materials, and work aids, and operate an
22 ongoing, statewide training program on the supportive services
23 uniformity system for county workers, managers, quality assurance
24 staff, state hearing officers, and public authority or nonprofit
25 consortium staff, to the extent a county operates a public authority
26 or nonprofit consortium. The training shall be expanded to include
27 variable assessment intervals, statewide hourly task guidelines,
28 and use of the protective supervision medical certification form
29 as the development of each of these components is completed.
30 Training shall be scheduled and provided at sites throughout the
31 state. The department may obtain a qualified vendor to assist in
32 the development of the training and to conduct the training
33 program. The design of the training program shall provide
34 reasonable flexibility to allow counties to use their preferred
35 training modalities to educate their supportive services staff in this
36 subject matter.

37 (2) *On or before July 1, 2010, the department, in consultation*
38 *with the State Department of Health Care Services, counties, and*
39 *other stakeholders, as appropriate, shall ensure that a standardized*

1 *curriculum and training materials for county social workers are*
2 *developed for the purpose of preventing fraud within the program.*

3 (f) The department shall, in conjunction with the counties,
4 develop protocols and procedures for monitoring county quality
5 assurance programs. The monitoring may include onsite reviews
6 of county quality assurance activities. The focus of the established
7 monitoring protocols and procedures shall include determining
8 the extent to which counties are fulfilling their quality assurance
9 responsibilities and county quality assurance staff are correctly
10 applying the uniformity system in reviewing supportive services
11 cases for consistent, appropriate, and accurate service need
12 assessments. The department and the county welfare departments
13 shall also develop the protocols and procedures under which the
14 department will report its monitoring findings to a county,
15 disagreements over the findings are resolved, to the extent possible,
16 and the county, the State Department of Health Care Services, and
17 the department will follow up on the findings.

18 (g) The department shall conduct a review of program
19 regulations in effect on the date of enactment of this section and
20 shall revise the regulations as necessary to conform to the statutory
21 changes that have occurred since the regulations were initially
22 promulgated and to conform to federally authorized program
23 changes.

24 (h) *The department, in consultation with the county welfare*
25 *departments and other stakeholders, as appropriate, shall develop*
26 *protocols for the implementation of targeted mailings to providers,*
27 *to convey program integrity concerns.*

28 SEC. 7. *Section 12305.71 of the Welfare and Institutions Code*
29 *is amended to read:*

30 12305.71. Counties shall perform the following quality
31 assurance activities:

32 (a) Establish a dedicated, specialized unit or function to ensure
33 quality assurance and program integrity, including fraud detection
34 and prevention, in the provision of supportive services.

35 (b) Perform routine, scheduled reviews of supportive services
36 cases, to ensure that caseworkers appropriately apply the supportive
37 services uniformity system and other supportive services rules and
38 policies for assessing recipients' need for services to the end that
39 there are accurate assessments of needs and hours. Counties may
40 consult with state quality assurance staff for technical assistance

1 and shall cooperate with state monitoring of the county's quality
2 assurance activities and findings.

3 (c) The department and the county welfare departments shall
4 develop policies, procedures, implementation timelines, and
5 instructions under which county quality assurance programs will
6 perform the following activities:

7 (1) Receiving, resolving, and responding appropriately to claims
8 data match discrepancies or other state level quality assurance and
9 program integrity information that indicates potential overpayments
10 to providers or recipients or third-party liability for supportive
11 services.

12 (2) Implementing procedures to identify potential sources of
13 third-party liability for supportive services.

14 (3) Monitoring the delivery of supportive services in the county
15 to detect and prevent potential fraud by providers, recipients, and
16 others and maximize the recovery of overpayments from providers
17 or recipients.

18 (A) *As appropriate, in targeted cases, to protect program*
19 *integrity, this monitoring may include a visit to the recipient's*
20 *home to verify the receipt of services.*

21 (B) *The exact date and time of a home visit shall not be*
22 *announced to the supportive services recipient or provider.*

23 (C) *The department, in consultation with the county welfare*
24 *departments, shall develop protocols for followup home visits and*
25 *other actions, if the provider and recipient are not at the recipient's*
26 *home at the time of the initial home visit. The protocols shall*
27 *include, at a minimum, all of the following:*

28 (i) *Information sent to the recipient's home regarding the goals*
29 *of the home visit, including the county's objective to maintain*
30 *program integrity by verifying the receipt of services, the quality*
31 *of services and consumer well-being, and the potential loss of*
32 *services if fraud is substantiated.*

33 (ii) *Additional attempted visits to the recipient's home, pursuant*
34 *to subparagraph (A).*

35 (iii) *Followup phone calls to both the recipient and the provider,*
36 *if necessary.*

37 (4) Informing supportive services providers and recipients, and
38 the public that suspected fraud in the provision or receipt of
39 supportive services can be reported by using the toll-free Medi-Cal
40 fraud telephone hotline and Internet Web site.

1 (5) *In accordance with protocols developed pursuant to*
2 *subdivision (h) of Section 12305.7, distribute targeted program*
3 *integrity mailings to providers. The purpose of the targeted*
4 *program integrity mailings is to inform providers of appropriate*
5 *program rules and requirements and consequences for failure to*
6 *adhere to them.*

7 (d) Develop a schedule, beginning July 1, 2005, under which
8 county quality assurance staff shall periodically perform targeted
9 quality assurance studies.

10 (e) In accordance with protocols developed by the department
11 and county welfare departments, conduct joint case review
12 activities with state quality assurance staff, including random
13 postpayment paid claim reviews to ensure that payments to
14 providers were valid and were associated with existing program
15 recipients; identify, refer to, and work with appropriate agencies
16 in investigation, administrative action, or prosecution of instances
17 of fraud in the provision of supportive services. The protocols shall
18 consider the relative priorities of the activities required pursuant
19 to this section and available resources.

20 SEC. 8. *Section 12305.73 is added to the Welfare and*
21 *Institutions Code, to read:*

22 12305.73. (a) *The department, in consultation with the county*
23 *welfare departments, shall develop protocols and procedures for*
24 *obtaining fingerprint images of all individuals who are being*
25 *assessed or reassessed to receive supportive services under this*
26 *chapter.*

27 (b) (1) *For any recipient whose initial client assessment occurs*
28 *on or after April 1, 2010, he or she shall be fingerprinted at the*
29 *same time of initial assessment by a social worker, in the*
30 *recipient's home, as specified in the protocols and procedures*
31 *developed by this section.*

32 (2) *For any recipient already receiving in-home supportive*
33 *services on April 1, 2010, during the recipient's next reassessment,*
34 *a social worker shall obtain fingerprint images for that recipient,*
35 *in the recipient's home, pursuant to this section.*

36 (c) *Fingerprint imaging information obtained from a recipient*
37 *pursuant to this section shall remain confidential, and shall only*
38 *be used for identification purposes directly connected with the*
39 *provision of supportive services to that recipient and program*
40 *integrity.*

(d) *An individual who is a minor or who is physically unable to provide fingerprints due to amputation or other physical limitations shall be exempt from any requirement to provide fingerprints under this section.*

(e) *Upon completion of the development of protocols and procedures pursuant to subdivision (a), the department shall be authorized to take the necessary steps to implement this section by April 1, 2010.*

SEC. 9. Section 12305.82 of the Welfare and Institutions Code is amended to read:

12305.82. (a) In addition to its existing authority under the Medi-Cal program, the State Department of Health Care Services shall have the authority to investigate fraud in the provision or receipt of *in-home* supportive services. ~~Except as provided in subdivision (e), a county shall refer instances of suspected fraud in the provision or receipt of supportive services to the State Department of Health Care Services, which shall investigate all suspected fraud.~~ *Counties shall also have the authority to investigate fraud in the provision or receipt of in-home supportive services pursuant to the protocols developed in subdivision (b).* The department, the State Department of Health Care Services, and *counties, including county quality assurance staff,* shall work together as appropriate to coordinate activities to detect and prevent fraud by *in-home* supportive services providers and recipients in accordance with federal and state laws and regulations, including applicable due process requirements, to take appropriate administrative action relating to suspected fraud in the provision or receipt of *in-home* supportive services, and to refer suspected criminal offenses to appropriate law enforcement agencies for prosecution.

(b) (1) *The department, in consultation with county welfare directors and other stakeholders, as appropriate, shall develop uniform statewide protocols for acceptable activities to be performed and acceptable measures to be taken by the department, the State Department of Health Care Services, and the counties for purposes of fraud prevention.*

(2) *The State Department of Health Care Services, the department, and the county may share data with each other as necessary to prevent fraud and investigate suspected fraud pursuant to this section. The information shall only be used for*

1 *purposes of preventing and investigating suspected fraud in the*
2 *In-Home Supportive Services program, and shall otherwise remain*
3 *confidential.*

4 ~~(b)~~

5 (c) If the State Department of Health Care Services concludes
6 that there is reliable evidence that a ~~supportive services~~ provider
7 or recipient of supportive services has engaged in fraud in
8 connection with the provision or receipt of *in-home* supportive
9 services, the State Department of Health Care Services shall notify
10 the department, the county, and the county's public authority or
11 nonprofit consortium, if any, of that conclusion.

12 (d) *If a county concludes that there is reliable evidence that a*
13 *supportive services provider or recipient has engaged in fraud in*
14 *connection with the provision or receipt of in-home supportive*
15 *services, the county shall notify the department and the State*
16 *Department of Health Care Services of that conclusion.*

17 ~~(e)~~

18 (e) Notwithstanding any other provision of law, a county may
19 investigate suspected fraud in connection with the provision or
20 receipt of supportive services, with respect to an overpayment of
21 five hundred dollars (\$500) or less.

22 (f) *The failure of a provider or a recipient to comply with*
23 *program requirements may result in termination of his or her*
24 *participation in the In-Home Supportive Services program, subject*
25 *to all applicable federal and state due process requirements.*

26 SEC. 10. Section 12305.85 is added to the Welfare and
27 Institutions Code, to read:

28 12305.85. (a) A provider enrollment form shall be completed
29 using the provider's physical residential address, and shall not be
30 completed using a post office box address.

31 (b) A paycheck for a provider shall not be mailed to a post office
32 box unless the county approves a written or oral request from the
33 provider, which shall include an explanation of the circumstances
34 that make the use of a post office box appropriate or necessary.
35 The county shall document an oral request received pursuant to
36 this subdivision the provider's request and the county's approval
37 or disapproval shall be retained in the provider's file.

38 SEC. 11. Section 12305.86 is added to the Welfare and
39 Institutions Code, to read:

1 12305.86. (a) Effective October 1, 2009, a county shall
2 investigate the background of a person who seeks to become a
3 supportive services provider and who is not listed on the registry
4 of a public authority or nonprofit consortium pursuant to Section
5 12301.6. This investigation shall include criminal background
6 checks conducted by the Department of Justice pursuant to Section
7 15660.

8 (b) No later than July 1, 2010, the county shall complete a
9 criminal background check pursuant to subdivision (a) for a
10 provider who is providing in-home supportive services prior to
11 October 1, 2009, and who is not listed on a public authority or
12 nonprofit consortium registry, as a condition of the provider's
13 continued enrollment in the IHSS program. Criminal background
14 checks shall be conducted at the provider's expense.

15 (c) Upon notice from the Department of Justice that a
16 prospective or current provider has been convicted of a criminal
17 offense specified in Section 12305.81, the county shall deny or
18 terminate the applicant's request to become a provider of
19 supportive services to any recipient of the In-Home Supportive
20 Services program.

21 (1) If an applicant or provider is rejected as a result of
22 information contained in the criminal background report, the
23 applicant or provider shall receive a copy of his or her own
24 criminal history record from the Department of Justice, as provided
25 in Article 5 (commencing with Section 11120) of Chapter 1 of Title
26 1 of Part 4 of the Penal Code, to review the information for
27 accuracy and completeness. The applicant or provider shall be
28 advised that if, upon review of his or her own criminal history
29 record, he or she finds the information to be inaccurate or
30 incomplete, the applicant or provider shall have the right to submit
31 a formal challenge to the Department of Justice to contest the
32 criminal background report.

33 (2) The department shall develop a written appeal process for
34 the current and prospective providers who are determined
35 ineligible to receive payment for the provision of services under
36 the In-Home Supportive Services program.

37 (3) An applicant shall be informed of his or her right to a waiver
38 of the fee for obtaining a copy of a criminal history record, and
39 of how to submit a claim and proof of indigency, as required by
40 Section 11123 of the Penal Code.

1 (d) Nothing in this section shall be construed to prohibit the
2 Department of Justice from assessing a fee pursuant to Section
3 11105 or 11123 of the Penal Code to cover the cost of furnishing
4 summary criminal history information.

5 (e) The department shall seek federal financial participation,
6 to the extent possible, to cover any costs associated with this
7 section.

8 SEC. 12. Upon completion of the 2009–10 budget process, the
9 State Department of Social Services shall consult, as appropriate,
10 with stakeholders on the implementation of Section 12301.6 of the
11 Welfare and Institutions Code, as amended by this act, and Sections
12 12301.25, 12305.85, and 12305.86 of the Welfare and Institutions
13 Code, as added by this act. Stakeholders shall include, but not be
14 limited to, the County Welfare Directors Association, legislative
15 staff, and stakeholders representing In-Home Supportive Services
16 program recipients and providers.

17 SEC. 13. (a) Notwithstanding the rulemaking provisions of
18 the Administrative Procedure Act (Chapter 3.5 (commencing with
19 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
20 Code), the State Department of Social Services may implement
21 and administer this act through all-county letters or similar
22 instruction from the department until regulations are adopted. The
23 department shall adopt emergency regulations implementing this
24 section no later than July 1, 2010. The department may readopt
25 any emergency regulation authorized by this act that is the same
26 as, or substantially equivalent to, an emergency regulation
27 previously adopted under this act.

28 (b) The initial adoption of emergency regulations implementing
29 this act and one readoption of emergency regulations shall be
30 deemed an emergency and necessary for the immediate
31 preservation of the public peace, health, safety, or general welfare.
32 Initial emergency regulations and the one readoption of emergency
33 regulations authorized by this section shall be exempt from review
34 and approval by the Office of Administrative Law. The initial
35 emergency regulations and the one readoption of emergency
36 regulations authorized by this section shall be submitted to the
37 Office of Administrative Law for filing with the Secretary of State
38 and each shall remain in effect for no more than 180 days, by
39 which time final regulations may be adopted.

1 (c) The department shall consult with stakeholders in the
2 formulation and drafting processes of the all-county letters and
3 regulations required under this section prior to their finalization
4 and release.

5 SEC. 14. This act addresses the fiscal emergency declared by
6 the Governor by proclamation on July 1, 2009, pursuant to
7 subdivision (f) of Section 10 of Article IV of the California
8 Constitution.

9 SEC. 15. No reimbursement is required by this act pursuant
10 to Section 6 of Article XIII B of the California Constitution for
11 certain costs that may be incurred by a local agency or school
12 district because, in that regard, this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 However, if the Commission on State Mandates determines that
19 this act contains other costs mandated by the state, reimbursement
20 to local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.

23 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
24 ~~changes relating to the Budget Act of 2009.~~

25 ~~SEC. 2. This act addresses the fiscal emergency declared by~~
26 ~~the Governor by proclamation on July 1, 2009, pursuant to~~
27 ~~subdivision (f) of Section 10 of Article IV of the California~~
28 ~~Constitution.~~

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